

**MINORITY MEDIA AND
TELECOMMUNICATIONS COUNCIL**

DOCKET FILE COPY ORIGINAL

3636 16th Street N.W., Suite AG-58

Washington, D.C. 20010

Phone: (202) 332-0500 Fax: (202) 332-0503

Henry Rivera
Chairperson

Frank Washington
Vice Chairperson

Erwin Krasnow
Secretary

Eduardo Peña
Treasurer

BOARD OF DIRECTORS

Barbara Amwine
Robert Branson
Howard Braun
Dorothy Brunson
Antionette Cook Bush
Joy Butler
Angela Campbell
Thomas Castro
Belva Davis
Tamara Davis
Armando Duron
Michael Gardner
George Gerbner
Allen Hammond
Thomas Hart
Wade Henderson
Ragan Henry
Anne Jones
Albert Kramer
Erwin Krasnow
Byron Marchant
Francisco Montero
Alex Nogales
Peter O'Connell
John Oxendine
Everett Parker
Eduardo Peña
Benjamin Pérez
Vincent Pepper
Anthony Pharr
Henry Rivera
Larry Roberts
Thomas Schattenfield
Andrew Schwartzman
Jason Shrinsky
Robert Thompson
Frank Washington
Herbert Wilkins
Patricia Worthly

David Honig
Executive Director

Selina Khan
Counsel

Ayesha Nichols
Research Director

Hon. Reed Hundt
Chairman
Federal Communications Commission
1919 M Street N.W., Suite 814
Washington, D.C. 20554

July 21, 1995

RECEIVED

JUL 26 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Chairman Hundt:

RE: MM Docket No. 87-268, Advanced Television Systems

ATV must not be reserved for incumbents first or incumbents only.

Imagine the outcry in 1927 if the FRC had restricted radio licenses to newspaper owners. Or imagine if the FCC, in 1949, had decreed that only radio owners were eligible for the first television licenses -- and that the licensees could use the new TV spectrum for beepers if they so chose.

Ridiculous? Consider that this is exactly what the old boys club of incumbent license holders want the FCC to do with ATV. They want the Commission to deliver them the first helpings of the ATV cake and invite minorities to nibble the crumbs later.

A gargantuan spectrum giveaway to the nearly all-white NTSC incumbents would violate the due process and equal protection clauses of the 14th Amendment by depriving minorities of access to the most powerful and important public resource held in trust by the federal government. An incumbents-only regime would unlawfully institutionalize the present effects of past and continuing discrimination.

Why do minorities own only about 30 full power television stations, representing less than half of one percent of industry asset value? In large part, this sorry spectacle of segregation was staged by the FCC itself. This agency prevented two generations of minorities from receiving access to media training by granting the most valuable licenses to de jure or de facto segregated state agencies, universities and commercial applicants.

No. of Copies rec'd
List A B C D E

0211

Hon. Reed Hundt

July 21, 1995

Page Two.

This klavern of bigots possessed neither the desire nor the character to serve the entire viewership -- as the uniform wavepaths of TV signals enabled them to do and as the Communications Act required them to do. The Commission couldn't have cared less. See, e.g., Southland Television, 10 RR2 699, recon. denied, 20 FCC 159 (1955) (crediting Louisiana state segregation laws in awarding a Shreveport commercial VHF license to the owner of segregated movie theaters and drive-ins); Office of Communication of the United Church of Christ v. FCC, 425 F.2d 543 (D.C. Cir. 1969) (vacating renewal of a Jackson, Mississippi TV license held by a company so racist that rather than broadcasting Thurgood Marshall's appearance on its own network's newscast after the Brown decision, it substituted a sign declaring "Sorry, Cable Trouble.")

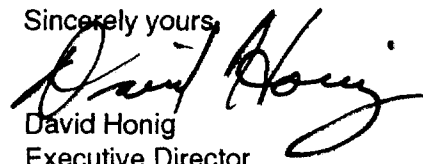
Thanks to an unregulated, 100% white station brokerage industry, segregated institutions and the designees to which they've handed down their properties over the years now comprise the highly selective club which seeks first "dibs" on the lucrative ATV frequencies. Given the historical context, that is outrageous and completely unacceptable. This would be precisely the kind of civil wrong which President Clinton, two days ago, called upon all agencies of the federal government to remedy affirmatively.

What of the argument that "the public is screaming that they want ATV yesterday, so only the most financially well endowed companies should be allowed to build it?" Fortunately, most Americans haven't even heard of ATV, so diversity needn't take a back seat to haste. Moreover, many newcomers would provide superior service and could build out their facilities just as quickly as incumbents. Certainly a newcomer should be given a chance to show that she could construct as quickly as an incumbent. If a newcomer makes that showing, she should be considered on an equal basis with any other applicant who makes that showing. That is the least the FCC can do for those deprived of the financial headstart the FCC gave to incumbents when it gave them their initial licenses for free.

There's one additional, profoundly important step the Commission can take to promote diversity in ATV. It can adopt the incubator page from its broadcast minority ownership proceeding, providing comparative credits and application processing incentives for applicants to design in private initiatives to assist minorities seeking to own ATV, NTSC, radio, program supply or other enterprises which give life to the First Amendment. Cf. TV-9, Inc. v. FCC, 495 F.2d 929 (D.C. Cir. 1973) (creating "minority sensitivity" credit equal to a minority preference in comparative hearings).

This year, Congress and the courts seem bent on hobbling the Commission's ability to promote diversity directly. In this hostile climate, the Commission should be careful that in proceedings like this one, it does everything in its power to create a pro-diversity climate. All potential ATV settlers should have a chance to pioneer this electronic 40 acres and a mule.

Sincerely yours,



David Honig
Executive Director

cc: Hon. James Quello
Hon. Andrew Barrett
Hon. Susan Ness
Hon. Rachelle Chong

/dh